

**STANDARD AGREEMENT**

STD. 213 (NEW 06/03)

**Attachment 6**

AGREEMENT NUMBER

**HSR10-34**

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

CONTRACTOR'S NAME

2. The term of this Agreement is: May 9, 2011 to June 30, 2013. The effective date of this Agreement is the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.
3. The maximum amount of this Agreement is: **\$ 2,500,000.00**
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Pages
Exhibit B – Budget Detail and Payment Provisions	Pages
Exhibit C – General Terms and Conditions (Revised)	GTC 610
Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement)	Pages
Exhibit E –	Pages

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.****CONTRACTOR****California Department of General  
Services Use Only**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Roelof van Ark, Chief Executive Director

ADDRESS

925 L Street, Suite 1425, Sacramento, CA 95814

☐ Exempt per:

## **EXHIBIT A SCOPE OF WORK**

### **PURPOSE**

The purpose of this Agreement is to assist the Authority in preparing a financial analysis plan that builds upon previous financial plans. This includes developing a robust portfolio of potential funding sources necessary to meet significant funding requirements, and the development of a financial analysis tool that takes into account the most current funding and credit enhancement opportunities.

### **GOALS AND OBJECTIVES**

The contractor shall be responsible for providing advisory services to develop financial analyses to support planning efforts and potential procurement and investment structures for the overall project and individual sections. These services will assist the Authority in carrying out the work plan outlined in the 2009 Business Plan.

The contractor shall prepare an overall financial plan in connection with the Authority's submission to the Legislature by October 14, 2011 of a biennial business plan. In addition, the contractor will be responsible for preparing financial plans as required by Proposition 1A for individual sections of the system as the decision makers approve the final environmental documents and select final alternatives. The Records of Decision/Notices of Determination (ROD/NOD) for the first sections of the system to be constructed in the Central Valley are expected to be completed in February 2012 with the financial plan to be prepared by September 15, 2011. The contractor will provide strategies and analysis for obtaining funding for implementation of the system, including individual sections of the system.

The 10 individual sections are:

- San Francisco to San Jose,
- San Jose to Merced,
- Merced to Sacramento,
- Merced to Fresno,
- Fresno to Bakersfield,
- Bakersfield to Palmdale,
- Palmdale to Los Angeles,
- Los Angeles to Anaheim,
- Los Angeles to San Diego, and
- Altamont Pass

A financial analysis must be developed taking into account the most current funding and credit enhancement opportunities. The impact of revised ridership forecasts, markets served, alternative assumptions regarding project phasing, the potential for high speed

freight service, as well as innovative approaches to right-of-way optimization will also require further financial analysis.

The Contractor shall further define the project delivery analysis to a certain extent in support of the financing plan and to gain public confidence in the project.

The Authority may exercise review and approval functions through its Chief Executive Officer throughout the project for the specific products and deliverables listed herein.

## **TASKS**

The Contractor shall include the following tasks and deliverables in the Scope of Work for the proposed program. The Contractor shall plan for the completion of these required tasks in the proposed program budget and schedule. The Contractor shall describe how the subcontractors, including DVBE's will be involved in each task.

1. Contractor shall produce the products and services necessary to meet the scope of work. Within 30 days of notification that the contract has been approved and notification to proceed has been provided by the Authority's Project Manager, the Contractor and the Authority shall confirm the project policy objectives and priorities; and agree upon a management plan with detailed tasks, deliverable, schedule and budget.
2. Beginning with the Fresno to Bakersfield section, the Contractor shall develop a section assessment and prepare a section-level financial analysis followed by assessments and financial analyses for each remaining section within the planned system. The plans shall include section development options and cash-flow analyses.
3. The Contractor shall participate in informational meetings with the Ridership and Revenue Model Enhancement, Peer Review Panel, other governmental entities as necessary, UC Davis contractors and others to facilitate timely coordination of effort, identify and address issues of concern, and share information.
4. The Contractor shall assess the existing financial plan, key data sources, and assumptions and identify potential gaps. The Contractor shall prepare a draft report that includes the findings and recommendations, and submit to the ACM for review and comment. The Contractor shall incorporate and submit any agreed-upon changes in a final report.
5. The Contractor shall define the project delivery analysis in support of the overall financing plan to gain public confidence in the project.
6. The Contractor shall evaluate procurement delivery models (i.e., design-bid-build vs. design-build, etc.) based on section market information and will include an assessment of time, cost and quality risks for each delivery model, and a

prospective allocation of risks to each party. The Contractor shall prepare an analysis of the procurement options for each section.

7. The Contractor shall identify prospective financing tools and programs, including, but not limited to, government programs, bonds, private lending and private equity. The Contractor shall prepare and present a draft report to the ACM for review and comment that explains the advantages and disadvantages of each program. The Contractor shall prepare and submit a final report incorporating any agreed-upon changes.
8. The Contractor shall identify prospective financing tools and programs, including, but not limited to, government programs, bonds, private lending and private equity. The Contractor shall prepare and present a draft report to the ACM for review and comment that explains the advantages and disadvantages of each program. The Contractor shall prepare and submit a final report incorporating any agreed-upon changes.
9. The Contractor shall finalize the analyses, prepare an overall financial plan and submit it as part of a draft report to the ACM for review and comment. The Contractor shall submit a final report incorporating any agreed-upon changes. The financial plan will be included in the Authority's biennial business plan due October 14, 2011.
10. All financial analysis data, products, charts, and other documents, hardcopy and electronic, prepared or assembled by Contractor/Team in connection with the service under this agreement shall be the property of the Authority. Within 15 days of completion of the work, or earlier termination of this agreement, the Contractor shall deliver all copies and documentation to the Authority.

## **CONTRACT MANAGEMENT**

Key contract management tasks include, but are not limited to: a kickoff meeting, monthly progress reports, and a final report and final meeting.

### **Kickoff Meeting**

The Contractor shall attend a "kick-off" meeting with the Authority Contract Manager (ACM), and Contracts Officer. The Contractor's Project Manager, Contract Administrator, and Accounting Officer shall attend this meeting. The administrative and technical aspects of this contract will be discussed. Prior to the kick-off meeting, the ACM will provide an agenda to all potential meeting participants. The ACM shall designate the date and location of this meeting.

The administrative portion of the meeting shall include, but not be limited to, the following:

- Terms and conditions of the Agreement
- Invoicing

The technical portion of the meeting shall include, but not be limited to, the following:

- The Authority Contract Manager's expectations for accomplishing tasks described in the Scope of Work;
- An updated Schedule of Deliverables
- Processes for submitting, reviewing and approving Progress Reports, Task Deliverables and Final Report

### **Monthly Progress Reports**

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of the project.

#### **The Contractor shall:**

Prepare monthly progress reports shall include major milestones, project schedules, progress by task to date, description of the progress, including identification of problems, proposed solutions and revised completion dates if necessary. The progress shall also indicate, in percentage form for each task, the amount of work completed and the budget expended to date, and any anticipated cost overruns. Each progress report is due to the ACM within 15 working days after the end of the reporting period.

### **Final Report and Final Meeting**

The goal of this task is to prepare a comprehensive written Final Report that describes the original purpose, approach, results and conclusions of the work performed under this contract. The Contractor shall submit a draft final report for review and comment by the ACM. The Contractor shall review recommendations for changes to the report with the ACM and incorporate the agreed-upon changes into the final version of the report. The Final Report must be completed on or before the termination date of the contract.

The Contractor shall meet with the Authority to discuss the overall contract and its closeout. The final meeting must be completed during the term of this Agreement. The ACM will determine the appropriate meeting participants. At the end of the meeting, the Contractor shall prepare a written summary of the meeting, and a schedule for completing closeout activities.

## SCHEDULE OF DELIVERABLES AND DUE DATES

Task	Deliverable	Estimated Due Date
1	Kickoff Meeting with the Authority	5/11/11
2	Participate in Meetings with Appropriate Agencies, Groups, and Consultants	Ongoing
3	Prepare Detailed Management Plan	5/27/11
4	Prepare an Assessment Report of the Existing Financial Plan	6/10/11
5	Define Project Delivery Analysis	6/10/11
6	Develop Section Assessments and Financial Analyses	7/1/11
7	Prepare Procurement Delivery Analysis	7/22/11
8	Prepare Section Development Options Draft Report	8/1/11
9	Prepare Section Development Option Final Report	8/15/11
10	Prepare Overall Financial Plan for inclusion in the October 14, 2011 Business Plan	9/1/11
11	Prepare Section Financial Plans	9/15/11 (first section) (ongoing)
12	Identify Prospective Financing Tools and Programs	2/1/12
13	Prepare Draft Financial Report for Review and Comment	TBD
14	Prepare Final Financial Report	TBD
15	Submit Monthly Contract Management Reports	15 <sup>th</sup> of the Month

**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. INVOICING AND PAYMENT**

- A. For services satisfactorily rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices, the Authority agrees to compensate the **Contractor** for actual expenditures incurred in accordance with the fully burdened labor hour rates specified herein, which is attached hereto and made a part of this Agreement.
- B. No payment shall be made in advance of services rendered.
- C. Invoices shall include the Agreement Number, identification of the number of hours worked by classification and related other direct costs (e.g., travel) by task, and shall be submitted not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the Contractor:

*I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a Government Entity contract, subcontract or other procurement method.*

- D. Invoices shall be submitted monthly in arrears to:

(Authority Contract Manager)  
California High-Speed Rail Authority  
925 L Street, Suite 1425  
Sacramento, CA 95814

**2. BUDGET CONTINGENCY CLAUSE**

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the Authority by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.

- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Authority shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Amendment to Contractor to reflect the reduced amount.

### 3. **COSTS AND PAYMENTS**

- A. The Contractor will be reimbursed for hours worked at the hourly rates and direct costs specified in the Contractor's Cost Proposal (**Attachment X**). The specified loaded hourly rates shall include direct salary costs, employee benefits, overhead and fees. These rates are not adjustable for the performance period set forth in this Agreement.
- B. Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. Contractor must pay for travel in excess of these rates. Any travel must be pre-approved by the Authority's Contract Manager. Contractor may obtain current rates at the following web site: <http://www.dpa.ca.gov/personnel-policies/travel/main.htm>
- C. Progress payments under this Agreement will be made no more frequently than monthly in arrears based on services provided at specific hourly rates and allowable direct costs incurred. The Authority will withhold **10%** of each progress payment. The total retention amount will be paid to the Contractor after the Authority has evaluated the Contractor's performance and made a determination that all contract requirements have been satisfactorily fulfilled. The Authority will release portions of the retention amount (in relation to the amount of actual costs incurred) as specific tasks and deliverables in the work plan have been completed and approved.
- D. The Contractor will be reimbursed as promptly as fiscal procedures will permit upon receipt by the Authority's Contract Manager by providing an itemized invoice. Separate invoices itemizing all costs, are required for all work performed under this Agreement. Invoices shall be submitted no later than 45 calendar days after completion of each billing period or upon completion of a Task. Invoices shall detail the work performed on each milestone. Invoices shall reference this contact number, project title and Task.
- E. The total amount payable by the Authority for this contract shall not exceed **\$2,500,000.00** as part of a multi-year effort.



4. **PROMPT PAYMENT CLAUSE**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

5. **DISPUTES**

Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.

No payment will be made for costs identified in Contractor invoices that has or will be reimbursed by any other source, including but not limited to a Government Entity contract or subcontract or other procurement Agreement.

6. **AUDIT**

The contracting parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the contract in accordance with Government Code Section 8546.7. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

7. **EXCISE TAX**

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The Authority will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

8. **DETAILED BUDGET**

*To be provided by winning bidder.*

## **EXHIBIT C**

### **GENERAL TERMS AND CONDITIONS**

GTC 610 – The General Terms and Conditions are included in this Agreement by reference and made part of this Agreement as if attached hereto. This document can be viewed at: <http://www.dgs.ca.gov/ols/home.aspx>.

Replace the General Terms and Conditions (GTC-610) clause #5, notwithstanding any term to the contrary in this Agreement, the following text shall control:

#### **1. LIMITATION OF LIABILITY:**

- A. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to four times the Contract Price of \$2.5 million.
- B. The foregoing limitation of liability shall not apply (i) to any liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- C. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the \$10 million, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- D. In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section B)(i), B)(ii), or B)(iv) above.

#### **2. INDEMNIFICATION:**

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its

agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- A. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- B. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
  - (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
  - (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
  - (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS**

**1. CONTRACT MANAGEMENT**

- A. The Contractor's Project Manager is responsible for the day-to-day project status, decisions and communications with the Authority's Contract Manager. The Contractor may change its Project Manager by giving written notice to the Authority, but the Authority reserves the right to approve any substitution of the Project Manager.
- B. The Authority may change its Contract Manager at any time by giving written notice to the Contractor. The Authority's Contract Officer will sign the written notice.

**2. SETTLEMENT OF DISPUTES**

In the event of a dispute, **Contractor** shall file a "Notice of Dispute" with the Authority's, Chief Executive Officer within ten (10) days of discovery of the problem. Within ten (10) days, the Chief Executive Officer shall meet with the **Contractor** and Project Manager for purposes of resolving the dispute. The decision of the Chief Executive Officer shall be final

In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

Neither the pendency of a dispute nor its consideration by the Chief Executive Officer will excuse the **Contractor** from full and timely performance in accordance with the terms of this Agreement.

**3. EVALUATION OF CONTRACTOR**

Consistent with Public Contract Code Sections 10367 through 10371, the Authority shall, upon completion of this Agreement, prepare a performance evaluation of the **Contractor**. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Authority shall notify and send a copy of the evaluation to the **Contractor** within 15 days. The **Contractor** shall have 30 days to prepare and send statements to the Authority and the DGS defending his or her performance. The **Contractor's** statement shall be filed with the evaluation in the Authority's Contract file and with DGS for a period of 36 months and shall not be a public record.

**4. SUBCONTRACTORS**

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Authority and any subcontractors, and no subcontract shall relieve the **Contractor** of his/her responsibilities and obligations hereunder. The

**Contractor** agrees to be as fully responsible to the Authority for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the **Contractor**. The **Contractor's** obligation to pay its subcontractors is an independent obligation from the Authority's obligation to make payments to the **Contractor**. As a result, the Authority shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

A. Agreements with Subcontractors

If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and **Contractor** shall manage the performance of the subcontractors.

Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the Authority and any subcontractors, and no subcontract shall relieve the **Contractor** of its responsibilities and obligations hereunder. The **Contractor** agrees to be as fully responsible to the Authority for the acts and omissions of its subcontractors or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the **Contractor**. The **Contractor's** obligation to pay its subcontractors is an independent obligation from the Authority's obligation to make payments to the **Contractor**. As a result, the Authority shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

**Contractor** shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. **Contractor** shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement, coordinating subcontractor accessibility to Authority staff, and submitting completed products to the Contract Manager. Upon request by the Contract Manager, **Contractor** shall provide with copies of all contractual agreements with subcontractors.

B. Contractor shall enter into agreements with the following firms and/or individuals and shall manage the performance of the Subcontractors or vendors.

---

---

---

All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

### C. Disabled Veteran Business Enterprise (DVBE) Changes

The Contractor shall use the DVBE companies identified in its proposal or in any certifications identifying DVBE to be used in this Agreement. Contractor's failure to adhere to the DVBE participation may be cause for termination. In the event a replacement of a DVBE is necessary, the Contractor shall request written approval, in advance, from the Contract Manager and the Contract Officer. The procedure for replacing any DVBE is:

Contractor shall inform Contract Manager and Contract Officer in writing of the reason for the DVBE replacement.

Contractor shall attempt to replace the DVBE with a new DVBE providing the same services or identify other services in the Agreement a new DVBE could provide. Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE. If replacement is not a DVBE, Contractor shall complete steps in compliance with good faith efforts and submit appropriate DVBE documentation to the Contract Officer.

## 5. **AMENDMENTS**

This Agreement may be amended to make changes, including without limitation; additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to Public Contract Code section 10335, Government Code section 11010.5 and the State Contract Manual.

- A. The **Contractor** shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the Authority's Contract Manager.
- B. There shall be no change in the **Contractor's** Project Manager or members of the project team, as listed in the price proposal which is part of this Agreement, without prior written approval by the Authority's Contract Manager.
- C. When approval is obtained, the **Contractor** will provide a resume for the additional or substituted Personnel along with a copy of the certified payroll for each person.

## 6. **REPORTS:**

### A. **Final Report and Final Meeting**

The goal of this task is to prepare a comprehensive written Final Report that describes the original purpose, approach, results and conclusions of the work performed under this contract. The Contractor shall submit a draft final report for review and comment by the ACM. The Contractor shall review recommendations for changes to the report with the ACM and incorporate the agreed-upon changes into the final version of the report. The Final Report must be completed on or before the termination date of the contract.

The Contractor shall meet with the Authority to discuss the overall contract and its closeout. The final meeting must be completed during the term of this Agreement. The ACM will determine the appropriate meeting participants. At the end of the meeting, the Contractor shall prepare a written summary of the meeting, and a schedule for completing closeout activities.

- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:

California High Speed Rail Authority  
Project Title  
Contract Number  
By (Contractor)

Ownership: Each report shall become the property of the Authority.

- C. **Non-disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or at public hearings held by the Authority relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Authority's actions on the same, except to Authority staff, Contractor's own personnel involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Authority or any other party, based on information received from the Authority as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- D. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

**"LEGAL NOTICE"**

**"This report was prepared as a result of work sponsored by the California High Speed Rail Authority. It does not necessarily represent the views of the Authority, its employees, or the State of California. The Authority, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."**

- E. Subject to the requirements of sections D ("Non-disclosure") above, Contractor shall have the following rights. Contractor retains the ability to publish scholarly articles and reports which draw on data and experience from this project. Such articles and/or reports shall not be published during the term of the contract, but may be published thereafter. Contractor will protect any confidential information provided by the Authority or other entity during the course of this project and not use such information in any publications. Contractor will provide the Authority the opportunity to provide comments prior to publication on drafts of any articles and reports which draw on data and experience from this project to ensure such confidential information does not appear, however such review shall not diminish Contractor's independent responsibilities under paragraphs D ("Non-disclosure"). Contractor will not speak to media or other news organizations about any subjects regarding this project beyond that which appears in such scholarly articles and reports.

## **7. CONTRACT DATA, OWNERSHIP RIGHTS:**

- A. "Data" as used in this Agreement means recorded information, regardless of form, characteristic, or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Authority and shall belong to the Authority.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Authority access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Authority's expense, together with complete



documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Authority, unless and only to the extent that it is specifically provided otherwise in this Agreement.

- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Authority of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Authority of any contemplated action and the Authority may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Authority so elects, the expense of further preserving data shall be paid for by the Authority. Contractor agrees that the Authority may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

#### 8. **PUBLIC HEARINGS:**

If public hearings on the scope of work are held during the period of the Contract, Contractor will make available personnel assigned to this Agreement. The Authority will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the presentation which the Authority may request.

#### 9. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Authority to enforce at any time any of the provisions of this Agreement, or to require at any time performance by **Contractor** of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Authority to thereafter enforce each and every such provision.

#### 10. **NOTICE**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit A of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this clause. This clause is not intended to apply to normal, daily communication between the parties related to progress of the

work. This clause applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed until the next business day.

#### **11. FORCE MAJEURE**

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulating utility or governmental statutes or regulations superimposed after the fact. If a delay or failure to perform by the Contractor/Team arises out of a default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor/Team and subcontractor, and without the fault or negligence of either of them, the Contractor/Team shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor/Team to meet the required performance schedule.

## **EXHIBIT E**

### **ADDITIONAL PROVISIONS**

#### **1. CONFIDENTIALITY OF DATA**

All financial, statistical, personal, technical and other data and information relating to the Authority's operation which are designated confidential by the Authority and made available to the **Contractor** in carrying out this contract, shall be protected by the **Contractor** from unauthorized use and disclosure. This Agreement imposes no obligation upon the **Contractor** with respect to confidential information which (a) was known to the **Contractor** or its affiliated companies before receipt from the Authority; (b) is or becomes a matter of public knowledge through no fault of the **Contractor**; (c) is rightfully received from a third party without a duty of confidentiality; (d) is required to be disclosed pursuant to a court order by the operation of law; or (e) is disclosed by the **Contractor** with prior written approval of the Authority.

#### **2. PROPOSAL INTERPRETATION**

This project shall be conducted in accordance with the terms and conditions of Request for Proposals, number HSR10-34, titled, Financial Consulting Services, Contractor's proposal \_\_\_\_\_, and this Agreement. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal, this Agreement shall be considered controlling.

#### **3. CONFLICT OF INTEREST**

The following laws apply to entities doing business with the State of California:

##### **A. Current State Employees (PCC 10410):**

- No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- No officer or employee shall contract on his or her own behalf as an independent Contractor/Team with any state agency to provide goods or services.

If Contractor/Team violates any provision of above paragraphs, such action by Contractor/Team shall render this Agreement void (PCC 10420).

Members of boards or commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or Authority, payment for preparatory time and payment for per diem (PCC 10430(e)).

**B. Former State Employees (GC 87406)**

1. Government Code 87406 (d)(1) prohibits a former State officer or employee from entering into a contact with any State agency if,
  - He or she was a designated employee by the same State agency in a position in the same subject area(s) as the proposed contract within the 12 month period prior to his or her separation.
2. Representation includes any formal or informal appearance, or oral or written communications to the Authority or to any of its officers or employees. This would include participation at presentations or interviews, attendance at scoping meetings, participation in negotiations and direct involvement in cost proposal and audit activities. See Government Code section 87406 subparagraph (d) subpart (1).
3. The categories of former Authority employees to whom the prohibition applies are any one or more of the following:
  - A “Designated Employee” as defined in the Government Code Section 82019, to include any officer or employee whose position with the Authority:
    - i. Was exempt for the State Civil Service System.
    - ii. Involved the employee in the functions of:
      - Negotiating or signing any competitive awarded contract
      - Decision making in conjunction with the competitive award process
      - Decision making on Emergency Force Account contracts awarded under Public Contract Code Sections 10122.
4. Former Authority employees, included former retired annuitants, proposed in the submittal who met the criteria above will not be allowed to participate as a proposed team member for this contract.
5. Violation by consultant(s) of any provisions found in the paragraphs above shall render every contract or other transaction entered into void unless the violation is technical and non-substantive.

Information regarding conflict of interest as stated in above reference Government Codes may be viewed by visiting the web site: <http://www.leginfo.ca.gov/calaw.html>.